

1 **LEW BRANDON, JR., ESQ.**

Nevada Bar No. 5880

2 **KRIS D. KLINGENSMITH, ESQ.**

Nevada Bar No. 13904

3 **MORAN BRANDON BENDAVID MORAN**

4 630 S. Fourth Street

Las Vegas, Nevada 89101

5 (702) 384-8424

(702) 384-6568 - *facsimile*

6 *l.brandon@moranlawfirm.com*

7 Attorneys for Defendant,

ALBERTSONS, LLC

8 **KYM S. CUSHING, ESQ.**

Nevada Bar No. 4242

9 **RICHARD HARRIS LAW FIRM**

10 801 South Fourth Street

Las Vegas, Nevada 89101

11 (702) 444-4444

12 (702) 444-4455 – Facsimile

13 Attorney for Plaintiff,

MARCIA SMITH

14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 MARCIA SMITH,

18 Plaintiff,

19 v.

20 ALBERTSON'S LLC, a Foreign Limited
21 Liability Company; DOES 1 through 20;
22 ROE BUSINESS ENTITIES 1 through 20,
inclusive, jointly and severally,

23 Defendants.

CASE NO.: 2:17-cv-03034-APG-PAL

24 **STIPULATED PROTECTIVE ORDER**

25 In connection with the production of confidential documents and other confidential
26 information in this action, Plaintiff, MARCIA SMITH ("Plaintiff") and Defendant,
27 ALBERTSONS, LLC ("Defendant Albertsons") through their respective counsel ("Plaintiff"
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 and Defendants may also be collectively referred to as, the “Parties” or individually as, “Party”),
2 hereby enter into this Stipulated Protective Order (“Stipulated Protective Order”).

3
4 **PURPOSE OF THIS PROTECTIVE ORDER**

5 The purpose of this Stipulated Protective Order is to provide a means for limiting access
6 to and use and disclosure of Confidential Documents or Information produced in this action.
7 Any unauthorized disclosure of Confidential Documents or Information in violation of this
8 Order may be subject to discipline by the contempt powers of this United States District Court
9 for the District of Nevada.

10 **DESIGNATION OF “CONFIDENTIAL DOCUMENTS OR INFORMATION”**

11 The Parties may designate such documents or information as “Confidential” in
12 accordance with the following procedures:

13
14 **A. “Confidential” Documents or Information.**

15 Either Party may designate any documents, records, reports, video tapes, tangible items,
16 or information as “Confidential.” Upon a designation of “Confidential,” the Parties shall treat
17 any designated document, record, report, video tape, tangible item, or information as
18 confidential and shall only use such document, record, report, video tape, tangible item, or
19 information solely for the prosecution or defense of this matter.
20

21 **B. Time of Designation**

22 Unless otherwise agreed between counsel for the Parties, the designation of Confidential
23 Documents or Information shall be made at the time of the production of documents, records,
24 reports, video tapes, tangible items, or information.
25

26 **C. Manner of Designation**

27 The designation of Confidential Documents or Information shall be made in the
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 following manner:

- 2 1. For documents, by placing the notation "Confidential" on each page of such document;
- 3 2. For tangible items, including any video tapes or documents or information produced on
4 magnetic disks or other computer related media, by placing the notation "Confidential" on the
5 object and, if applicable, on the container thereof or if such are not practicable, as otherwise
6 agreed by the Parties. In the event either Party generates any "hard copy" or printout from any
7 "Confidential Material," that Party must immediately stamp each page "Confidential," and the
8 hard copy or printout shall be treated as "Confidential Information pursuant to this Stipulated
9 Protective Order."

11 **D. Retroactive Designation**

12 1. Inadvertent production of any Confidential Documents or Information without a
13 designation of confidentiality will not be deemed to waive a later claim as to confidentiality or
14 privilege, or prevent the Party claiming confidentiality from re-designating such documents or
15 information as "Confidential" promptly after discovery of the inadvertent production.
16

17 2. Within a reasonable time after production, either Party may retroactively designate (or
18 withdraw a designation) of Confidential Documents or Information, regarding any material that
19 it has produced, provided however, that such retroactive designation (or withdrawal) shall be in
20 accordance with the terms of this Order. Such retroactive designation (or withdrawal) shall be
21 accomplished by notifying counsel for the non-designating Party in writing of such retroactive
22 designation (or withdrawal). Upon receipt of any such written re-designation, counsel (i) shall
23 not make any further disclosure or communication of such retroactively designated material
24 except as provided for in this Order; (ii) shall take reasonable steps to notify all persons known
25 to have possession of any retroactively designated material of the effect of such re-designation
26
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 under this Order; and (iii) shall take reasonable steps to procure all copies of such retroactively
 2 designated material from any persons known to have possession of any such retroactively
 3 designated material who are not entitled to receipt under this Order.

4 **E. Resolution of Disputes Regarding Designation**

5
 6 If either Party, at any time, wishes to have the “Confidential” designation of any
 7 particular Confidential Documents or Information removed or changed, that Party shall first
 8 request in writing that the Party having made the designation at issue change its designation.
 9 Thereafter, the Parties shall make good faith efforts to resolve the dispute. If the designating
 10 Party refuses to agree to remove or change the designation, then the Party that requests that the
 11 designation be so removed may make a motion before this Court for an order removing or
 12 changing the designation; provided, however, that the designating Party shall have the burden of
 13 proving that such particular Confidential Document or Information are properly designated as
 14 “Confidential” pursuant to paragraph III below. At all times during the process of challenging a
 15 designation, the Parties shall treat the Confidential Documents or Information as originally
 16 designated until a change is agreed to or the motion is decided by the Court and written notice
 17 of such decision is served on the Parties.
 18
 19

20 Any motion filed with respect to this Stipulated Protective Order or documents labeled
 21 “Confidential” must comply with the local rules of the United States District Court for the
 22 District of Nevada.
 23

24 **F. Designation of Third Party Documents.**

25 Documents and/or information produced by a third party in response to a subpoena or
 26 during deposition in the course of this litigation may involve receipt of information, documents,
 27 things or testimony which include, contain or comprise protected information that may or may
 28



MORAN BRANDON
 BENDAVID MORAN
 ATTORNEYS AT LAW

630 SOUTH 4TH STREET
 LAS VEGAS, NEVADA 89101
 PHONE: (702) 384-8424
 FAX: (702) 384-6568

not be appropriate for “Confidential” designation under this Order. Unless otherwise agreed in writing between counsel for the parties, documents and information so produced by a third party shall be treated as follows: First of all, all such documents and information shall automatically be deemed to be and shall be treated as “Confidential” for twenty (20) business days following their actual receipt by both counsel for Plaintiff and counsel for Defendants in this action, in order to enable each such counsel to determine whether in their view any protected information is embodied therein. If no designation of the information as “Confidential” by the Designating Party is received by the non-Designating Party within twenty (20) business days after production, then the information will not be protected by this Protective Order except pursuant to subsequent designation by a party hereto or pursuant to a subsequent agreement of the parties or Court order; if however a written designation of “Confidential” is made by a Designating Party and is received by the non-Designating Party within twenty (20) business days after production of documents or information by the non-party, then the information will be subject to this Protective Order and will be deemed to be “Confidential” (as requested by the Designating Party); provided, however, that the designation may be challenged as any such designation.

Lastly, to the extent third party documents or information contains information that is confidential and/or proprietary to the third party, the third party can avail itself of the protections set forth in this Order and designate documents and/or information it produces accordingly by executing this Order and agreeing to be bound by its terms.

**PERSONS TO WHOM CONFIDENTIAL DOCUMENTS OR INFORMATION MAY
BE DISCLOSED**

A. Disclosure of Documents or Information Designated as “Confidential”

Documents or Information designated as “Confidential” may be disclosed and copies



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 may be provided only to:

- 2 1. Counsel of record;
- 3 2. Expert witnesses or consultants retained by the Parties or their respective counsel in
- 4 connection with this action who have complied with paragraph III(C), below;
- 5 3. Outside court reporting services and court reporters as may be reasonably necessary in
- 6 connection with the preparation or conduct of this action;
- 7 4. This Court and its personnel, or any other tribunal of competent jurisdiction having
- 8 involvement in this matter and its personnel;
- 9 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate this action; and
- 10 6. Representatives of the Parties.

13 **B. Additional Authorized Disclosure of Documents or Information Designated**
14 **as “Confidential”**

15 Notwithstanding anything to the contrary in paragraph III(A) above, particular
16 Confidential Documents or Information that have been designated as “Confidential” may be
17 disclosed and copies may be provided:

- 19 1. To persons who are explicitly named on the document as the authors or addressees or to
- 20 persons who may be shown to be an author or recipient of any particular document;
- 21 2. To any other persons with the prior written consent of the designating Party;
- 22 3. To any other persons with the prior authorization of this Court or any other tribunal of
- 23 competent jurisdiction having involvement in this matter; and
- 24 4. If a document designated as “Confidential” refers to the conduct or affairs of a potential
- 25 witness, the Party’s counsel of record may and shall discuss such conduct or affairs with such
- 26 person without revealing the existence of the document, or its authors or source.
- 27
- 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **C. Disclosure to Experts or Consultants**

2 Prior to disclosing or providing copies of any Confidential Documents or Information to
 3 any expert or consultant pursuant to paragraphs III(A) or III(B), above, the Parties shall first
 4 obtain the agreement of the expert, consultant or anyone else to whom such disclosure will be
 5 made to be bound by the terms of this Stipulated Protective Order as set forth in the attached
 6 “Acknowledgment and Agreement To Be Bound.” Specifically, the expert or consultant shall
 7 acknowledge that, during the course of his or her retention, the expert or consultant may have
 8 access to, and become acquainted with Confidential Documents or Information, which are
 9 regularly used in the operation of the businesses of the designating Party and in which the
 10 designating Party has an expectation of confidentiality. The expert or consultant shall agree not
 11 to disclose such Confidential Documents or Information, directly or indirectly, to any person or
 12 entity not subject to this Stipulated Protective Order or use them in any way outside the specific
 13 scope of his/her retention as an expert witness in this action, or at any time thereafter.
 14

15 **D. Return of Confidential Documents or Information by Experts and Consultants**

16 Confidential Documents or Information disclosed to any expert or consultant may be
 17 retained by such expert or consultant provided that such expert or consultant subsequently
 18 destroys any and all copies of such Confidential Documents or Information upon the
 19 termination of their engagement.
 20

21 **USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION**

22 **A. Use of Confidential Documents or Information Generally**

23 Confidential Documents or Information shall only be used by the Parties, their respective
 24 agents, and any other persons to whom such Confidential Documents or Information may be
 25 disclosed pursuant to this Stipulated Protective Order: (1) in this action; (2) as otherwise
 26
 27
 28



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 compelled by lawful process (provided the designating Party is given a reasonable notice to
 2 object); or (3) as otherwise required by law. Notwithstanding the foregoing, nothing in this
 3 Stipulated Protective Order shall prevent or limit the designating Party from disclosing
 4 Confidential Documents or Information they so designate.
 5

6 **B. Use of Confidential Documents or Information in the Conduct of this Action**

7 1. Confidential Documents or Information may be used by counsel for the non-designating
 8 Party in good faith in connection with investigating this action, provided that the Confidential
 9 Documents or Information are protected pursuant to the terms and conditions of this Stipulated
 10 Protective Order.
 11

12 2. The terms of this Stipulated Protective Order do not apply to evidence presented at or for
 13 court proceedings and/or trial in this matter unless so designated by the Court. Any protective
 14 measures relating to Confidential Documents or Information should be taken up with the
 15 judicial officer conducting the particular proceeding at the appropriate time.
 16

17 3. If either Party seeks to file pleadings or other documents with this Court that contains
 18 the other Party's Confidential Documents or Information, it may do so only if: (a) the pleading
 19 and other documents that contains the other Party's Confidential Documents or Information are
 20 filed under seal in the manner prescribed by the Court; and (b) the filing Party informs the
 21 designating Party of such filing prior to the filing of such documents with the Court.
 22

23 **RETURN OF CONFIDENTIAL DOCUMENTS, TESTIMONY, OR INFORMATION**

24 Upon written request after the final conclusion of this action, the Parties shall:

25 A. Return to the other Party any and all Confidential Documents or Information so
 26 designated by that Party and all copies thereof in its possession, custody and control or
 27 otherwise destroy such documents;
 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 B. Ensure that all Confidential Documents or Information in the possession, custody
2 or control of any permitted parties or third parties are returned to the designating Party or are
3 otherwise destroyed; and

4 C. Destroy all notes, memoranda or other documents that contain excerpts from any
5 of the Confidential Documents or Information. Notwithstanding the foregoing, attorney work
6 product, attorney-client communications, and information derived from Confidential
7 Documents or Information may be retained by the non-designating Party and its counsel.

8
9 **PUBLIC DOCUMENTS**

10 None of the restrictions set forth in this Stipulated Protective Order shall apply to any
11 documents or other information that become public knowledge by means not in violation of the
12 provisions of this Stipulated Protective Order.

13
14 **NO PROBATIVE VALUE**

15 This Stipulated Protective Order shall not aggregate or diminish any contractual,
16 statutory or other legal obligation or right of any party or person with respect to any
17 Confidential Documents or Information. The fact that information is designated "Confidential"
18 under the Stipulated Protective Order shall not be deemed to be determinative of what a trier of
19 fact may determine to be confidential or proprietary. This Stipulated Protective Order shall be
20 without prejudice to the right of any party to bring information before this Court, regardless of
21 (a) whether any particular material is or is not Confidential, or (b) whether any particular
22 information or material is or is not entitled to a greater or lesser degree of protection under the
23 terms of this Stipulated Protective Order, provided that in doing so, the party complies with the
24 procedures set forth herein. The fact that any information is disclosed, used, or produced in any
25 proceeding in this action shall not be offered in any other action or proceeding before this or any
26
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 other Court, agency or tribunal as evidence of or concerning whether or not such information is
2 admissible, confidential or proprietary.

3 **NO IMPLIED WAIVER OF ADMISSION**

4
5 No party shall be obligated to challenge the proprietary nature of any designation of
6 “Confidential” information, and the failure to do so shall not constitute a waiver or otherwise
7 preclude a subsequent challenge to the designation.

8 **MODIFICATION OF THIS STIPULATED PROTECTIVE ORDER**

9 The Parties hereto may modify the terms of this Stipulated Protective Order by further
10 stipulation. However, no modification by the parties shall have the force or effect of a court
11 order unless the Court approves the modification. Alternatively, any party hereto may seek an
12 order of this Court to modify the terms of this Stipulated Protective Order. Any motion seeking
13 such modification must be served upon all counsel of record and filed in accordance with this
14 Court’s filing procedures.
15

16 **EXECUTION AND COUNTERPART**

17 This Stipulated Protective Order may be executed in one or more counterparts, each of
18 which shall be deemed to be an original, but all of which together shall constitute one and the
19 same instrument.
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Facsimile signatures shall be binding upon the Parties hereto and may be submitted and considered as originals.

IT IS SO STIPULATED.

DATED this 18th day of June, 2018.


RICHARD HARRIS LAW FIRM

MORAN BRANDON BENDAVID MORAN

/s/ Kym S. Cushing, Esq.
KYM S. CUSHING, ESQ.
Nevada Bar No. 4242
801 South Fourth Street
Las Vegas, Nevada 89101
(702) 444-4444
(702) 444-4455 – Facsimile
Attorney for Plaintiff,
MARCIA SMITH

/s/ Lew Brandon, Jr., Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
KRIS D. KLINGENSMITH, ESQ.
Nevada Bar No. 13904
630 S. Fourth Street
Las Vegas, Nevada 89101
Attorneys for Defendant,
ALBERTSONS, LLC

IT IS SO ORDERED.


U.S. Magistrate Judge

Dated: July 10, 2018



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Acknowledgment and Agreement To Be Bound

I hereby acknowledge that I may receive information designated as “Confidential” from counsel to a party to this action. I hereby certify my understanding that such information will be provided to me pursuant to the terms and restrictions of the above Stipulated Protective Order that has been entered by the Court; that I have been given a copy of, and have read and understand, such Stipulated Protective Order; that I agree to be bound by the terms thereof; and that I irrevocably submit to the personal jurisdiction of the Court in connection with any proceeding to enforce the Stipulated Protective Order that may involve me.

ACKNOWLEDGED AND AGREED:

Name: _____
Address: _____
Employer: _____
Title: _____
Dated: _____

